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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 340

TROY BLAND CADE

Appellant

versus

STATE OF LOUISIANA

Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA:

JAMES SHARP, JR.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No._____

TROY BLAND CADE

Appellant

versus

STATE OF LOUISIANA

Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA:

JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment and decision of the Supreme Court of the State of Louisiana, entered in this suit on the 14th day of June, 1963. The judgment appealed from affirmed a judgment of the Fourth Judicial District Court for Ouachita Parish, Louisiana, refusing to dis-

miss the above proceedings on the grounds that State Courts are without jurisdiction to prosecute for desecration of the flag of the United States. Appellant filed a motion to dismiss in the District Court alleging that State Courts were without jurisdiction to prosecute for desecration of the flag of the United States since the charges if true constituted an offense against the United States. Appellant further alleged that the power of the State to enact and to enforce antisubversive legislation had been superseded by the Congress of the United States in its enactment of the Smith Act, 18 U.S.C. § 2385. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented. In the alternative appellant alleges, avers and shows that a writ of certiorari could issue to the Supreme Court of Louisiana for reason the Louisiana Statute, R.S. 14:116 (Appendix "A") defining flag desecration is repugnant to the constitution, treaties or laws of the United States, particularly the Smith Act, 18 U.S.C. § 2385.

OPINIONS BELOW

The opinions below are not reported. The Fourth Judicial District Court gave no written reason for overruling the motion to dismiss. The Supreme Court of Louisiana rendered a brief handwritten opinion which is set forth, infra page 6 and R 7.[1]

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[1] "R" refers to the record of the proceedings filed in the Supreme Court of Louisiana.

JURISDICTION

Appellant herein is before the District Court below on a Grand Jury indictment for flag desecration in violation of Article 116 of Title 14 of the Revised Statutes of the State of Louisiana, which indictment was filed against the appellant in Open Court on May 24, 1961. The indictment charges that appellant did wilfully and feloniously violate Article 116 of Title 14 of the Revised Statutes of the State of Louisiana, a criminal offense entitled "Flag Desecration," in that the said appellant did defile and by word and act cast contempt on the flag of the United States of America by displaying publicly a picture of the flag of the United States of America as representing a place of "hell, slavery and death." Appellant filed a motion to quash the indictment, which motion was considered by the Court on June 30, 1961, and was overruled. Appellant did object to the ruling of the Court and reserved a formal bill (R 30). No further action was taken by the prosecution in regard to this case until February 7, 1963, when appellant was ordered to appear in Court for the purpose of fixing this case for trial. Appellant appeared in Court on this date and promptly filed a motion to dismiss this case on the grounds that the State Courts were without jurisdiction to prosecute for desecration of the flag of the United States (R 24). The motion was fixed for trial on May 17, 1963, and was accordingly taken up by the Court on said date. After hearing the arguments of counsel and a consideration of the brief (R 32) filed in support of the motion, the Court denied same. Appellant did then and there object to the ruling of the Court and reserved a formal bill and gave notice of appellant's intention to apply to the Honorable Supreme Court of Louisiana for writs of certiorari, prohibition and mandamus. The

Court did then and there sign an order directing that the application be filed with the Supreme Court of Louisiana, on or before the 14th day of June, 1963 (R 28). The application was timely filed with the Supreme Court of the State of Louisiana and same was refused by the Supreme Court of the State of Louisiana on June 14, 1963. Thereafter appellant filed notice of intention to appeal and in the alternative to petition for writ of certiorari to the Supreme Court of the United States, which notice was filed with the Supreme Court of Louisiana on June 25, 1963. There is no right of rehearing under the rules of the Supreme Court of Louisiana, Rule XI, Section 5.[2]

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, United States Code, Section 1257(2); Federal Code Annotated, Title 28, Section 1257(2). The Supreme Court of the United States could also review this decision by writ of certiorari, which authority is conferred by Title 28, United States Code, Section 1257(3); Federal Code Annotated, Title 28, Section 1257(3). The following cases sustain the jurisdiction of the Supreme Court of the United States to review the judgment of the Louisiana Court in direct appeal: *Uphaus v. Wyman*, 79 S. Ct. 1040, 360 U.S. 72, *Sweezy v. State of New Hampshire*, 77 S. Ct. 1203, 354 U.S. 234. The following cases sustain the jurisdiction of the Supreme Court of the

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[2] Louisiana Supreme Court Rule XI. Rehearings.

"Section 5. An application for a rehearing will not be considered when the court has merely granted or refused to grant a writ of certiorari or review or an alternative writ of mandamus or prohibition, or rule nisi, but a petition for rehearing, if filed within the legal delay, will be considered when the Court has decided a case on a writ of review to the Court of Appeal, or under the court's supervisory jurisdiction, the same as if the case has been decided on appeal."

United States to review the judgment of the Louisiana Court by writ of certiorari: *Sweezy v. State of New Hampshire*, 77 S. Ct. 1203, 354 U.S. 234; *Pennsylvania v. Nelson*, 76 S. Ct. 477, 350 U.S. 497.

The issue presented by this appeal and/or petition for certiorari is as follows:

1. Whether State Courts have jurisdiction to prosecute appellant for desecration of the flag of the United States of America pursuant to Title 14, Section 116 of the Revised Statutes of the State of Louisiana; in view of the constitution, treaties and laws of the United States, particularly the Smith Act, 18 U.S.C. § 2385.

QUESTIONS PRESENTED

Appellant is charged with desecration of the flag of the United States under Section 116 of Title 14 of the Revised Statutes of Louisiana (Appendix "A"). The indictment (R 17) reads as follows:

> "Did then and there wilfully and feloniously violate Article 116 of Title 14 of the Revised Statutes of the State of Louisiana, a criminal offense entitled 'Flag Desecration,' in that the said Troy Bland Cade did defile and by word and act cast contempt on the flag of the United States of America by displaying publicly a picture of the flag of the United States of America as representing a place of 'hell, slavery and death.' "

It is appellant's contention that this statute forms a part of the "Louisiana Communist Control Law." The reason for this opinion is that Acts 1952, Number 506, Section 10 provides that R.S. 14:358 through R.S. 14:365 are cumulative

of all existing laws and do not repeal any such laws. Acts 1952 Number 506, Section 11 provides that R.S. 14:358 through R.S. 14:364 may be cited as the "Louisiana Communist Control Law."[1] Subversive activities as defined by R.S. 14:366-14:380 are offenses affecting organized government and forms a part of the Louisiana Communist Control Law and as such governed by the same principle. It is clear then that the Louisiana Communist Control Law was designed to prohibit substantially the same conduct as the Smith Act, 18 U.S.C.A. § 2385. Appellant contends that when the prohibited conduct is directed against the federal government the Smith Act supersedes any State law prohibiting the same conduct. *Pennsylvania v. Nelson*, 350 U.S. 497, 76 S. Ct. 477. It is believed that State Courts would not have concurrent jurisdiction with the federal government to prosecute acts of subversion against the government of the United States as Congress had no such intention through its enactment of the Smith Act.

The Smith Act, however, does not prevent the States from protecting themselves against sabotage or attempted violence of all kinds. *Uphaus v. Wyman*, 360 U.S. 72, 79 S. Ct. 1040. It can hardly be said, however, that desecration of the flag of the United States is an act of sabotage or attempted violence of any nature against the State of Louisiana. In view of this fact it is appellant's contention that there is no basis upon which the State of Louisiana can prosecute in this connection, as the State of Louisiana is without the requisite interest to proceed.

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[1] Amended by Acts 1962, Number 270, Section 1 and is now R.S. 14:358-R.S. 14:374 and cited as the Subversive Activities and Communist Control Law.

STATEMENT OF THE CASE

Appellant is a member of the Negro race and a citizen of the State of Louisiana and of the United States of Amerieа. He adheres to the religious faith of Islam which is commonly known as "Black Muslim." Appellant is a Minister of the religious sect of Islam and the basis of the charge here is that appellant did violate Article 116 of Title 14 of the Revised Statutes of Louisiana in that appellant did defile and by word and act cast contempt on the flag of the United States of America by displaying publicly a picture of the flag of the United States as representing a place of "hell, slavery and death."

Appellant filed a motion to dismiss this charge in the District Court (R 24), which motion alleged that the State Courts were without jurisdiction to prosecute this charge in view of the Smith Act, 18 U.S.C. § 2385 (Appendix "B"). The District Court denied this motion without reason on May 17, 1963 (R 31). Appellant timely filed an application for writs of certiorari, prohibition and mandamus with the Supreme Court of Louisiana. The Supreme Court of Louisiana denied the application on June 14, 1963, stating:

> "The application is denied. The ruling and judgment complained of are correct." (R 7)

THE QUESTION IS SUBSTANTIAL

Appellant asserts that the question presented by this appeal and in the alternative this application for writs of certiorari is substantial. We reason that the charge of desecration of the flag of the United States if true would consti-

tute an offense primarily against the government of the United States. Therefore, the State of Louisiana would be without the requisite interest to take the initiative in prosecuting this crime. The Smith Act was enacted by Congress for the purpose of punishing those who would commit acts affecting organized government in an effort to overthrow said government by force or violence. In view of this fact the Smith Act would seem to supersede any State law prohibiting the same conduct, or substantially the same conduct as the Smith Act, which conduct is directed against the federal government. It further appears that State Courts would not have concurrent jurisdiction with the federal government to prosecute such acts as Congress would seem to have had no such intention. The indictment charges in substance that defendant committed flag desecration by displaying publicly a picture of the flag of the United States as representing a place of "hell, slavery and death." Under the Louisiana Statute this is considered to be an act affecting organized government. The Smith Act clearly prohibits substantially this same act as the said Smith Act prohibits publicly displaying any written or printed matter advocating, advising or teaching the duty, necessity, desirability or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so. In view of the Smith Act the State Courts have no jurisdiction to prosecute for desecration of the flag of the United States.

CONCLUSION

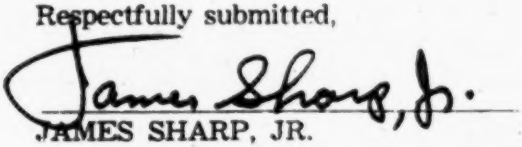
It is submitted that the position of appellant is sound and that the Louisiana Statute prohibits substantially the same conduct as the Smith Act; that the act charged here is

directed against the federal government and therefore the Smith Act supersedes the State Statute in this respect.

It is further submitted that the issue and federal question is substantial; as the State of Louisiana would assume concurrent jurisdiction with the federal government in the prosecution of the charge against appellant of desecration of the flag of the United States. That this Court ought to give plenary consideration to this case and the issue herein presented upon brief and oral argument by all parties. That it should be determined which government—State or Federal—has the requisite interest to prosecute for the crime of desecration of the flag of the United States.

Further submit in the alternative that the papers herein submitted be treated as a petition for writ of certiorari as provided in 28 U.S.C. § 2103.

Respectfully submitted,



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PROOF OF SERVICE

I, James Sharp, Jr., attorney for Troy Bland Cade, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this the 2 day of August, 1963, I served a copy of the foregoing jurisdictional statement, and its appendices, on State of Louisiana, appellee in connection with this appeal, by delivering the same to its counsel of record, Honorable Albin P. Lassiter, District Attorney of Ouachita Parish, Louisiana, at his office in said City by placing a copy of same in his hands.

James Sharp, Jr.
Attorney for Appellant

APPENDIX "A"

FLAG DESECRATION: R.S. 14:116

Flag desecration is the act of any person who shall intentionally, in any manner, for exhibition or display:

(1) Place or cause to be placed any word, mark, design or advertisement of any nature upon any flag; or

(2) Expose to public view any flag, upon which has been printed or otherwise produced, or to which shall have been attached any such word, mark, design, or advertisement; or

(3) Expose to public view, or have in possession for sale or any other purpose, any article of merchandise, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any flag, in order to advertise, call attention to or decorate such article; or

(4) Publicly mutilate, defile, or by word or act cast contempt upon any flag.

The word "flag" as used herein shall mean any duly authorized flag or shield of the United States or of the State of Louisiana, or any copy thereof.

Whoever commits the crime of flag desecration shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both.

APPENDIX "B"

THE SMITH ACT, 18 U.S.C. § 2385, 18 U.S.C.A. § 2385

"Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

"Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for five years next following his conviction."

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No. 340

TROY BLAND CADE,

Appellant,

versus

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of the State of Louisiana:

SUPPLEMENTAL AND AMENDED JURISDICTIONAL STATEMENT

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SUPREME COURT OF THE UNITED STATES

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On Appeal from the Supreme Court of the State of Louisiana:

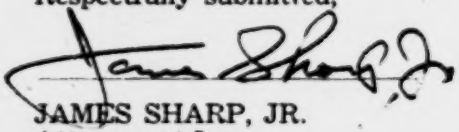
SUPPLEMENTAL AND AMENDED JURISDICTIONAL STATEMENT

Appellant hereby supplements and amends the jurisdictional statement filed herein on August 6, 1963, as follows, to-wit:

OPINIONS BELOW

The opinions below are not reported. The Fourth Judicial District Court gave no written reason for overruling the motion to dismiss. The Supreme Court of Louisiana rendered a brief handwritten opinion which is set forth at page 7 of the original statement instead of page 6 as stated therein. This brief opinion is appended hereto as Appendix "C".

Respectfully submitted,



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APPENDIX "C"

SUPREME COURT OF LOUISIANA

New Orleans

June 14, 1963

No. 46,813

State of Louisiana

v.

Troy Bland Cade

In re: Troy Bland Cade applying for writs of certiorari, prohibition and mandamus

---

The application is denied. The rulings and judgment complained of are correct.

[s] JBF
[s] JBH
[s] FWH
[s] EHMcC
[s] WBH
[s] JWS
[s] FWS

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No. 340

TROY BLAND CADE,

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On Appeal from the Supreme Court of the State of Louisiana:

PETITION FOR REHEARING

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IN THE

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OCTOBER TERM, 1963

No. 340

TROY BLAND CADE,

Appellant,

Versus

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of the State of Louisiana:

PETITION FOR REHEARING

The petition of Troy Bland Cade, appellant herein, respectfully represents that the judgment of this Honorable Court rendered Monday, October 21, 1963 refusing appellant's appeal in the above case and also declining to review appellant's complaint by certiorari could be in error for the reasons hereinafter stated:

—1—

Appellant is charged with desecration of the flag of the United States under Section 116 of Title 14 of the Revised Statutes of Loui iana, which statute is set forth in full for the convenience of the court as follows, to-wit:

FLAG DESECRATION: R.S. 14:116

Flag desecration is the act of any person who shall intentionally, in any manner, for exhibition or display:

(1) Place or cause to be placed any word, mark, design or advertisement of any nature upon any flag; or

(2) Expose to public view any flag, upon which has been printed or otherwise produced, or to which shall have been attached any such word, mark, design, or advertisement; or

(3) Expose to public view, or have in possession for sale or any other purpose, any article of merchandise, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any flag, in order to advertise, call attention to or decorate such article; or

(4) Publicly mutilate, defile, or by word or act cast contempt upon any flag.

The word "flag" as used herein shall mean any duly authorized flag or shield of the United States or of the State of Louisiana, or any copy thereof.

Whoever commits the crime of flag desecration shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both.

—2—

At the time appellant was indicted the above statute came within that chapter of the criminal laws of the State of Louisiana entitled "Offenses Affecting Organized Government," which has for its purpose to punish acts of treason and disloyal acts against the government, volume 9, Page 582-585 Louisiana Revised Statutes of 1950.

—3—

This chapter was amended by the 1962 Louisiana Legislature, by Act Number 270 and R.S. 14:354-14:374 is now known as The Subversive Activities and Communist Control Law of Louisiana, (see, page 82 Cumulative Annual Pocket Part, Louisiana Revised Statutes for the Year 1963). The flag desecration statute, R.S. 14:116 was not repealed but remains in full force and effect, (see, page 60 Cumulative Annual Pocket Part, Louisiana Revised Statutes for the Year 1963.) The Louisiana Statute under which appellant was indicted, therefore, forms a part of the Subversive Activities and Communist Control Law of Louisiana.

—4—

The word "flag" as used in the statute means any duly authorized flag or shield of the United States or of the State of Louisiana, or any copy thereof. Appellant herein was not indicted for any act against any flag or shield of the State of Louisiana, but plainly indicted for desecration of the flag of the United States. The State of Louisiana in this prosecution is not seeking to protect the general peace and order of the community as such state authority is prescribed in R.S. 14:103, as amended of the Revised Statutes of Louisiana under the title (Offenses Affecting the General Peace and Order).

—5—

The Louisiana Statute, R.S. 14:116 under which appellant is indicted was enacted to control and punish subversive activities, but the State's power to enact and enforce this legislature, as to such acts against the United States has been superseded by the Congress of the United States in its enactment of the Smith Act, 18 U.S.C. § 2385. (*Pennsylvania v. Nelson*, 350 U.S. 497, 76 S. Ct. 477)

—6—

In *Nelson*, it is our judgment the following principles were established by this court when it affirmed the decision of the Pennsylvania Supreme Court:

(1) The Smith Act supersedes any State Law prohibiting the same conduct as the Smith Act, which conduct is directed against the federal government.

(2) The States do not have concurrent jurisdiction with the federal government to prosecute acts of subversion against the government of the United States.

(3) The Smith Act, does not prevent the States from protecting themselves against sabotage or attempted violence of all kinds.

—7—

Under the decision of this court in *Uphaus v. Wyman*, 360 U.S. 72, 79 S. Ct. 1040, the State of Louisiana could proceed with prosecution for sedition or act of subversion against the

state itself. Appellant contends that the charge of desecration of the flag of the United States cannot properly be considered as such act or acts against the State of Louisiana. That, accordingly the State of Louisiana is without jurisdiction to prosecute in this case.

—8—

The Supreme Court of Louisiana recognized the principle herein stated on the basis of the *Nelson* case in *State of Louisiana v. Jenkins*, 107 So. 2d 648, when said court, McCaleb, J., "held that the entire field of subversive activity has been preempted by Federal legislation, and Federal supersession has rendered State statutes as to subversive activities unenforceable and states have no power to prosecute Communist activity."

—9—

In *Wyman*, it was made clear that the decision in *Nelson* did not strip the states of rights to protect themselves. Appellant contends that here, the State is not attempting to protect itself, but is attempting to protect the Federal government as the authority of the State to protect the general peace and order of the community is prescribed in R.S. 14:103, as amended of the Revised Statutes of Louisiana.

—10—

The decision of the court in denying this appeal will have the effect of permitting state courts to prosecute acts of subversion in which their interest is not dominant and therefore could lead to a conflict between state and Federal authority in

the administration of the Federal program in the field of subversive activities.

—11—

Appellant argues that an appeal could be granted in this case for reason the power of the state to enact and to enforce antisubversive legislation, as to acts against the Uni' 1 States, has been superseded by the Congress of the Unit States in its enactment of the Smith Act, 1' U.S.C. § 238' Argue further that a writ of certiorari could issue to the upreme Court of Louisiana for reason the Louisiana Sta' e, R.S. 14:116 defining flag desecration is repugnant to the constitution, treaties or laws of the United States, par icularly the Smith Act, 18 U.S.C. § 2385.

—12—

Appellant further represents to the court that oral argument on this motion for rehearing is advisable and should be granted in order that full benefit may be had in the resolution of the question of jurisdiction involved herein.

WHEREFORE, Petitioner prays:

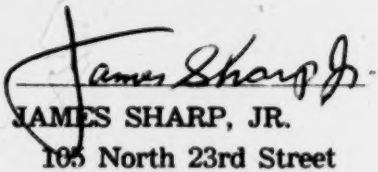
(1) That a rehearing be granted in this cause.

(2) That oral argument on this motion for rehearing be allowed and that sufficient time be allotted for argument as in the discretion of the Court is deemed advisable.

(3) That after full consideration before the Court probable jurisdiction be noted and the appeal granted.

(4) That in the alternative the matter be reviewed by certiorari pursuant to 28 U.S.C. § 2103.

Respectfully submitted,



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PROOF OF SERVICE

I, James Sharp, Jr., attorney for Troy Bland Cade, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this the 13 day of November, 1963, I served a copy of the foregoing petition for rehearing, on State of Louisiana, appellee in connection with this appeal, by delivering the same to its counsel of record, Honorable Albin P. Lassiter, through the United States mail with first class postage affixed thereto and addressed to his office at the Ouachita Parish Court House, Monroe, Louisiana.

James Sharp, Jr.
Attorney for Appellant

CERTIFICATE

I, James Sharp, Jr., attorney for Troy Bland Cade, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that this petition for rehearing is presented in good faith and not for delay.

James Sharp, Jr.
Attorney for Appellant

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